#### UNITED STATES OF AMERICA

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

# DAIRY FARMERS OF AMERICA Employer

and Case 31-RC-103359

# TEAMSTERS LOCAL UNION NO. 186 Petitioner

### **ORDER**

Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup>

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

Dated, Washington, D.C., June 12, 2013.

<sup>&</sup>lt;sup>1</sup> The Employer contends that the Board does not have a valid quorum under *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013) and *NLRB v. New Vista Nursing & Rehabilitation*, 2013 WL 2099742, -- F.3d -- (3d Cir. May 16, 2013), and therefore an election cannot be directed. The Employer further contends that, due to the Board's alleged lack of a quorum, the Regional Director's appointment was invalid, and so the Regional Director's Decision and Direction of Election was likewise invalid. For the reasons stated in *Bloomingdale's, Inc.*, 359 NLRB No. 113 (2013), these arguments are rejected.

We likewise reject the Employer's related contention that the Regional Director would lack authority to process representation petitions if the Board lacked a quorum. The Board's delegation of its decisional authority in representation cases to Regional Directors dates back to 1961 and has never been withdrawn. See 26 Fed. Reg. 3889 (May 4, 1961). Consistent with the 1961 Delegation, NLRB Regional Directors remain vested with the authority to conduct elections and certify their results, regardless of the Board's composition at any given moment. Furthermore, in *New Process Steel*, the Supreme Court expressly stated that such delegations were not affected by its decision, and, following that decision, no fewer than three courts of appeals have upheld the principle that Board delegations of authority to non-members remain valid during a loss of quorum by the Board. See *New Process Steel L.P. v. NLRB*, 130. S.Ct. 2635, 2643 n.4 (2010); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir. 2011); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011); *Overstreet v. El Paso Disposal, LP*, 625 F.3d 844, 853 (5th Cir. 2010).